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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,497	05/31/2006	Michael Stroder	4791-4006	4218

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT	PAPER NUMBER
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3743

NOTIFICATION DATE	DELIVERY MODE
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02/11/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/540,497	Applicant(s) STRODER ET AL.	
	Examiner Stephen M. Gravini	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 16-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20050623, 20080822, 20080812</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 1-15 and 24-25 in the reply filed on December 31, 2008 is acknowledged. The traversal is on the grounds that the special technical feature, not disclosed in the Kim patent, is shared by independent claims 1 and 16. This is not found persuasive because in the first independently claimed invention (claim 1) the technical feature of "feeding microwave radiation from a microwave source into the fluidized-bed reactor, introducing from below a first gas or gas mixture is introduced from through at least one gas supply tube into a mixing chamber of the fluidized-bed reactor, the at least one gas supply tube being at least partly surrounded by a stationary annular fluidized bed which is fluidized by supplying fluidizing gas, and supplying the microwave radiation to the mixing chamber through the at least one gas supply tube" is not recited in the second independently claimed invention (claim 16) which includes "a reactor having a fluidized-bed reactor and a microwave source, and the reactor comprises a gas supply system which is formed such that gas flowing through the gas supply system entrains solids from a stationary annular fluidized bed, which at least partly surrounds the gas supply system, into the mixing chamber, and that microwave radiation can be introduced by the gas supply system." More specifically, the technical features of claim 1 feeding radiation into a reactor and introducing a first gas or mixture from below, along with claim 16 steps of entraining and introducing, demonstrate the lack of the same or corresponding technical features.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 6, 10-13 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (US 5,374,413) in view of van Slooten (US 4,992,245). The claims are reasonably and broadly construed, in light of the accompanying specification, to be disclosed by Kim as comprising:

feeding microwave radiation from a microwave source into the fluidized-bed reactor (column 6 line 54 through column 7 line 12 and column 7 lines 38-57), introducing from below a first gas or gas mixture is introduced from through at least one gas supply tube into a mixing chamber of the fluidized-bed reactor (figure 1 and column 7 line 58 through column 8 line 45), the at least one gas supply tube **20** being at least partly surrounded by a fluidized bed which is fluidized by supplying fluidizing gas

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(column 8 line 46 through column 9 line 2), and supplying the microwave radiation to the mixing chamber through the at least one gas supply tube **17** (column 9 line 58 through column 10 line 51). Kim also discloses the claimed adjusting the solids in the reactor have a bed height such that the annular fluidized bed extends beyond the upper orifice end of the gas supply tube and that solids are constantly introduced into the first gas or gas mixture and entrained by the gas stream to the mixing chamber located above the orifice region of the gas supply tube (column 10 line 52 through column 11 line 6) wherein solids discharged from the reactor and separated in a downstream separator are at least partly recirculated to the annular fluidized bed of the reactor (figure 2 and column 13 lines 33-58). Kim discloses the claimed invention, except for the claimed stationary annular fluidized bed. Van Slooten, another fluidized bed microwave method, discloses that feature at column 8 line 50 through column 10 line 12. It would have been obvious to one skilled in the art to combine the teachings of Kim, with the stationary annular feature of van Slooten, for the purpose of optimizing the microwave treatment of granular solids for an efficient use of energy. Furthermore, Kim in view of van Slooten discloses the claimed invention except for the specific microwave frequencies, adjustable wave guide cross section, or fluidized bed temperatures. It would have been an obvious matter of design choice to recite those features, since the teachings of Kim in view of von Slooten would perform the invention as claimed, regardless of the frequency, adjustable cross section, or temperature.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim in view of van Slooten in view of Stroder (WO 2004/056452). Kim in view of van

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Slooten discloses the claimed invention, as rejected above, except for the claimed feature of adjusting gas velocities of the first gas or gas mixture and of the fluidizing gas for the annular fluidized bed wherein the gas velocities have a Particle-Froude-Number in the gas supply tube between 1 and 100, in the annular fluidized bed between 0.02 and 2, and in the mixing chamber between 0.3 and 30, wherein the Particle-Froude-Number in the gas supply tube is between 1.15 and 20, wherein the Particle-Froude-Number in the annular fluidized bed is between 0.115 and 1.15, wherein the Particle-Froude-Number in the mixing chamber is between 0.37 and 3.7 stationary annular fluidized bed. Stroder, another fluidized bed microwave method, discloses that feature of the face of that reference. It would have been obvious to one skilled in the art to combine the teachings of Kim in view of van Slooten, with the specific Particle-Froude-Numbers of Stroder, for the purpose of optimizing the adjustable gas velocity flow for microwave treatment of granular solids for an efficient use of energy.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim in view of van Slooten in view of Hardwick et al. (US 4,490,287). Kim in view of van Slooten discloses the claimed invention, as rejected above, except for the claimed feature of wherein the microwave radiation is introduced through a gas supply tube constituting a wave guide and/or through a wave guide arranged in the gas supply tube, wherein the microwave radiation is introduced through a plurality of wave guides, each wave guide being provided with a separate microwave source, wherein purge gas is passed through the wave guide. Hardwick, another fluidized bed method, discloses that feature at column 7 line 30 through column 8 line 38. It would have been obvious

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to one skilled in the art to combine the teachings of Kim in view of van Slooten, with the wave guide arrangement of Hardwick, for the purpose of optimizing microwave energy in granular solids for an efficient fluidized bed treatment.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-15 and 24-25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 10/540,433. Applicants' copending application claims the same invention as the present application, except for the claimed inclination angle. It would have been an obvious matter of design choice to recite an angle, since the present application would perform the copending claimed invention regardless of the angle

This is a provisional obviousness-type double patenting rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other prior art references cited teach one or more features of the claimed invention but are not relied upon in rejecting the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth B. Rinehart can be reached on 571 272 4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 22, 2009
/Stephen M. Gravini/
Primary Examiner, Art Unit 3743